

TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS

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DIVISION 1. MEMBER RECORD

Rule 2.1 Roll of attorneys

The State Bar maintains, on the official membership records of the State Bar, the roll of all attorneys admitted to practice in California.¹

Rule 2.1 adopted effective June 17, 2006.

Rule 2.2 Public information

A member record contains public information, including the following:

- (A) last name, first name, and any middle names;
- (B) State Bar member number;
- (C) address and telephone number;
- (D) e-mail address;
- (E) date of admission in California;
- (F) places and dates of admission in other jurisdictions before admission in California;
- (G) membership status;

¹ California Rule of Court, Rule 9.6.

- (H) date of any transfer from one membership status to another;
- (I) date and period of any discipline; and
- (J) any other information as directed by the Supreme Court or otherwise required by law.

Rule 2.2 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.3 Duty to update member record

- (A) A member must inform the State Bar of a change of address, telephone number, or e-mail address no later than thirty days after making the change. The member must report a change of address or telephone number online or using the State Bar Address Change Form. The member must make a change of e-mail address online.
- (B) A member must inform the State Bar of a change of name no later than thirty days after making the change. The member must report the change using the State Bar Name Change Form.

Rule 2.3 adopted effective June 17, 2006.

Rule 2.4 Confidential treatment of address history

Every member must maintain with the State Bar a non-confidential current address,² but upon the request of a member, the State Bar will not publicly disclose a member's prior address.

Rule 2.4 adopted effective July 20, 2007.

DIVISION 2. ANNUAL MEMBERSHIP FEES AND PENALTIES

Rule 2.10 Definitions

- (A) "Annual membership fees" are those fees that any member must pay to maintain active or inactive membership in a calendar year. These fees may include additional assessments and costs prescribed by law.³
- (B) "Penalties" are the surcharges assessed any member who fails to pay annual membership fees on time.

² Business and Professions Code § 6002.1(a)(1).

³ Business & Professions Code §§ 6140.5, 6140.7.

Rule 2.10 adopted effective June 17, 2006.

Rule 2.11 Due date

A member must pay the annual membership fees set forth in the Schedule of Charges and Deadlines each calendar year no later than February 1.

Rule 2.11 adopted effective June 17, 2006.

Rule 2.12 New members

A new member must be enrolled as active and pay initial fees within forty-five days of the invoice date for the fees as follows:

- (A) full annual membership fees if admitted between January 1 and May 31;
- (B) half the annual membership fees if admitted between June 1 and November 30;
- (C) the administrative fee for admission set forth in the Schedule of Charges and Deadlines if admitted in December.

Rule 2.12 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.13 Late payment penalties

Late payment of annual membership fees is subject to the penalties set forth in the Schedule of Charges and Deadlines.

Rule 2.13 adopted effective June 17, 2006.

Rule 2.14 No refund

Unless these rules provide otherwise, a member is not entitled to a refund of annual membership fees because of death, resignation, disbarment, transfer to inactive status, entering judicial office, or for any other reason.

Rule 2.14 adopted effective June 17, 2006.

Rule 2.15 Scaling

- (A) An active member who has a total gross annual individual income from all sources of less than \$40,000 may request a 25% reduction of annual membership fees. The request must be submitted by the date set forth in the Schedule of Charges and Deadlines and include

(1) the Active Member Fee Scaling Declaration signed under penalty of perjury; and

(2) payment of the reduced fee.

New members admitted after May 31 do not qualify for scaling.

(B) An employer that receives State Bar Legal Services Trust Fund grants and is a qualified legal services project or qualified support center as defined by statute⁴ may request a reduction of annual membership fees by 25% for an active member employed on a continuous full-time basis. The request must be submitted by the date set forth in the Schedule of Charges and of Deadlines and include

(1) the Qualified Employer Fee Scaling Declaration signed under penalty of perjury that the employer is qualified and pays annual membership fees on the member's behalf; and

(2) payment of the reduced fee.

(C) Members who scale are subject to audit and upon request must provide the State Bar with past federal and state income tax returns or other acceptable documentation of financial condition.

(D) If the State Bar determines that a member is ineligible to scale, the member must pay full annual membership fees and any late payment penalties.

Rule 2.15 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.16 Waivers

(A) In this rule, "annual membership fees" and "penalties" are construed narrowly and do not include

(1) disciplinary costs⁵ or monetary sanctions,⁶

(2) Client Security Fund disbursements and costs,⁷

⁴ Business & Professions Code § 6210 et seq.

⁵ Business and Professions Code § 6086.10.

⁶ Business and Professions Code § 6086.13.

⁷ Business and Professions Code § 6140.5.

- (3) mandatory fee arbitration award penalties and costs,⁸
 - (4) Minimum Continuing Legal Education (“MCLE”) noncompliance or reinstatement penalties, or
 - (5) any other charges that may be added to annual membership fees for failure to comply with obligations imposed by court order, statute, or rule.
- (B) To be considered for the current year, a request must be submitted by February 1. Requests submitted after February 1 must be accompanied by full payment of any outstanding charges, which will be refunded if the request is granted.
- (C) The Secretary may waive up to \$1,000 in annual membership fees and related penalties for the year in which they are due, provided that the request is
- (1) in writing;
 - (2) supported by satisfactory documentation; and
 - (3) for any of the following reasons:
 - (a) the member is prevented or greatly impaired from pursuing a livelihood for a substantial part of the membership year because of a physical or mental condition, natural disaster, or family emergency;
 - (b) the member has a total annual income from all sources of \$20,000 or less;
 - (c) the member serves full-time as a magistrate, commissioner, or referee for a state or federal court of record;
 - (d) the member is a retired judge who accepts assignments from the Chief Justice of California to act in a judicial capacity at least 90% of the calendar year;
 - (e) the State Bar has erroneously assessed the annual membership fees or related penalties; or

⁸ Business and Professions Code § 6203(d)(3).

- (f) for any other reason, on a one-time-only basis, if the member has no previous record of discipline, suspension or involuntary inactive enrollment.
- (D) The Secretary may waive annual membership fees and related penalties for a member serving in the Army National Guard, the Army Reserve, the Naval Reserve, the Marine Corps Reserve, the Air National Guard of the United States, the Air Force Reserve, or the Coast Guard Reserve provided that
 - (1) the member has been ordered to report to full-time active duty for more than thirty days;
 - (2) a request for waiver is submitted in writing by the member, member's spouse, relative, law partner or associate, or legal representative and accompanied by:
 - (a) a copy of the order to report for active duty, or
 - (b) a copy of the order to report for active duty and a certified declaration by a JAG officer that the member has served on active duty for more than thirty days.

A member granted a waiver under this rule must notify the State Bar within thirty days upon termination of the assignment to active duty.

- (E) Annual membership fees are waived for the year in which a judicial officer leaves office and returns to membership in the State Bar.
- (F) Annual membership fees are waived for inactive members who are 70 years of age on February 1.
- (G) Annual membership fees may be waived for a member who is an emeritus attorney.
- (H) The board reserves the right for good cause
 - (1) to grant requests for waivers denied by the Secretary; and
 - (2) to consider all other requests for waivers.
- (I) A waiver granted under this rule does not remove a court-ordered suspension for nonpayment of fees or penalties.

Rule 2.16 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.17 *Keller* deductions and challenges

- (A) *Keller v. State Bar of California* (1990) 496 U.S. 1 prohibits the State Bar from charging members for State Bar expenses for lobbying and certain other activities deemed political and ideological and unrelated to the Bar's permissible goals. California law authorizes members to take a deduction for lobbying activities.⁹ The Board of Governors may also identify each year additional deductions that it deems to be outside the scope of *Keller*. The State Bar restricts its spending on lobbying and other activities it deems outside the scope of *Keller* to fees paid voluntarily by members not taking the deductions. The deductions and the Bar's most recent audited expenses charged to mandatory membership fees are published as a Statement of Expenditures of Mandatory Membership Fees on the State Bar Web site when the State Bar mails invoices for annual membership fees. Notice is also provided in the California Bar Journal and members may request a copy of the statement by mail.
- (B) Members who believe that the annual Statement of Expenditures of Mandatory Membership Fees inappropriately includes an expenditure disallowed by *Keller* may object to the expenditure. The objection must be filed using the Challenge to Mandatory Membership Fees. The board may allow the objection or promptly refer it to arbitration. Filing an objection does not relieve a member of the obligation of paying the invoiced annual mandatory membership fees on time.
- (C) For purposes of this rule, "arbitration" means that the State Bar will refer the challenge to an arbitrator selected by the American Arbitration Association. The State Bar may consolidate multiple challenges. The arbitration procedure is specified in the instructions to the Challenge to Mandatory Membership Fees.
- (D) If an arbitrator determines that a challenged expense is outside the scope of *Keller* and is allowable as a deduction, the State Bar will refund the amount of the deduction to any public agency that has paid the amount on behalf of a member.

Rule 2.17 adopted effective July 20, 2007.

DIVISION 3. MEMBER STATUS

Rule 2.30 Inactive membership

⁹ Business and Professions Code § 6140.05.

- (A) Any member not under suspension, who does not engage in any of the activities listed in (B) in California, may, upon written request,¹⁰ be enrolled as an inactive member. The Secretary may, in any case in which to do otherwise would work an injustice and subject to any direction of the board permit retroactive enrollment of inactive members.
- (B) No member practicing law, or occupying a position in the employ of or rendering any legal service for an active member, or occupying a position wherein he or she is called upon in any capacity to give legal advice or counsel or examine the law or pass upon the legal effect of any act, document or law, shall be enrolled as an inactive member.
- (C) Notwithstanding (A) and (B) a member serving for a court or any other governmental agency as a referee, hearing officer, court commissioner, temporary judge, arbitrator, mediator or in another similar capacity is eligible for enrollment as an inactive member if he or she does not otherwise engage in any of the activities listed in (B) or hold himself or herself out as being entitled to practice law.

Rule 2.30 adopted effective August 19, 2006; amended effective July 20, 2007.

Rule 2.31 Change of membership status

- (A) A member may apply to change from active to inactive status or vice versa by submitting the Transfer to Active Status Form or the Transfer to Inactive Status Form with the transfer fee indicated in the Schedule of Charges and Deadlines. A change to inactive by February 1 entitles the member to pay the annual fees of an inactive member. A change to inactive after that date is permissible, but the member must pay annual fees at the active rate and is not entitled to a refund because of the change to inactive status.
- (B) While suspended, a member cannot change membership status.

Rule 2.31 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.32 Inactive enrollment for failure to comply with Minimum Continuing Legal Education (MCLE) requirements

- (A) A member who fails to meet requirements for Minimum Continuing Legal Education (MCLE) will be involuntarily enrolled as inactive.

¹⁰ Rule 2.31(A).

- (B) To terminate inactive enrollment for MCLE noncompliance, a member must comply with the MCLE rules governing reinstatement.¹¹

- (C) Annual membership fees accrue at the inactive rate.

Rule 2.32 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.33 Suspension for failure to pay annual membership fees and outstanding penalties or costs

- (A) A member who fails to pay annual membership fees or any outstanding penalties or costs will be sent a final delinquency notice at the member's address of record. If the State Bar fails to receive full payment of the amount due within two months of sending the final delinquency notice, the State Bar will recommend that the Supreme Court suspend the member from the practice of law.¹²
- (B) Annual membership fees accrue according to the member's status prior to suspension.
- (C) To terminate suspension for nonpayment, a member must pay
 - (1) all current and accrued fees, penalties, and costs; and
 - (2) the reinstatement fee set forth in the Schedule of Charges and Deadlines.

The payment must be made by a credit card accepted by the State Bar, in cash, or by cashier's check, money order, bank certified check, or wire transfer.

- (D) The State Bar will seek by an amendment nunc pro tunc to retroactively strike the name of a member from the Supreme Court Order of Suspension for Nonpayment if the suspension resulted from State Bar error.
- (E) Annually the State Bar may recommend that the Supreme Court expunge a suspension for nonpayment of membership fees if the suspension meets the criteria adopted by the court.¹³

¹¹ See Rule 2.93.

¹² Business and Professions Code § 6143.

¹³ California Rules of Court, Rule 9.6 (b).

Rule 2.33 adopted effective June 17, 2006; amended effective July 20, 2007; section (E) adopted effective July 20, 2007.

Rule 2.34 Suspension for failure to comply with a family or child support obligation

- (A) A member identified under the terms of Family Code § 17520 as failing to comply with a judgment or court order for child or family support will be suspended from the practice of law by the Supreme Court.¹⁴
- (B) The State Bar will send a written notice of suspension for failure to pay child or family support to the member's address of record. The suspension will be effective on the date ordered by the Supreme Court.
- (C) The State Bar will ask the Supreme Court to reinstate a member if it receives statutory notice¹⁵ that the obligation has been discharged and if the member has paid any surcharge authorized by statute.¹⁶
- (D) If a reinstated member subsequently fails to comply with a judgment or court order for child or family support,¹⁷ the State Bar will request that the Supreme Court suspend the member within thirty days and will send written notice of its request to the member's address of record.
- (E) Annual membership fees accrue according to the member's status prior to suspension.

Rule 2.34 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.35 Suspension for disciplinary violations

A member on actual rather than stayed suspension for disciplinary violations for part of a year must pay full annual membership fees. Annual membership fees do not accrue during periods of suspension that last an entire year.

Rule 2.35 adopted effective June 17, 2006; amended effective July 20, 2007.

Rule 2.36 Multiple accrual rates for annual membership fees

¹⁴ California Rules of Court, Rule 9.22.

¹⁵ Family Code § 17520.

¹⁶ Family Code § 17520(n).

¹⁷ Family Code § 17520.

If under these rules there is a conflict in the rate at which a member accrues fees, the active rate applies.

Rule 2.36 adopted effective July 20, 2007.

DIVISION 4. MINIMUM CONTINUING LEGAL EDUCATION

Chapter 1 Purpose and scope

Rule 2.50 Purpose of MCLE

Rules for Minimum Continuing Legal Education (MCLE) require active members of the State Bar of California to remain current regarding the law, the obligations and standards of the legal profession, and the management of their practices. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

Rule 2.50 adopted effective January 1, 2008.

Rule 2.51 Definitions

- (A) An "activity" is legal education that the State Bar approves as meeting standards for MCLE credit.
- (B) A "provider" is an individual or entity approved by the State Bar to grant MCLE credit for an educational activity.
- (C) "MCLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.
- (D) A "credit hour" is sixty minutes actually spent in an educational activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.
- (E) An "approved jurisdiction" is recognized by the State Bar as having MCLE requirements that substantially meet State Bar standards for educational activities and computing MCLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

Rule 2.51 adopted effective January 1, 2008.

Rule 2.52 Standards

To be approved for MCLE credit, an educational activity must meet State Bar standards.

- (A) The activity must relate to legal subjects directly relevant to members of the State Bar and have significant current professional and practical content.
- (B) The presenter of the activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the activity is approved for MCLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required MCLE in legal ethics, elimination of bias, or the prevention, detection, and treatment of substance abuse or mental illness that impairs professional competence.
- (D) If the activity lasts more than an hour, the provider must make substantive written materials available either before or during the activity. Any materials provided online must be available online for at least thirty calendar days following the activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.

Rule 2.52 adopted effective January 1, 2008.

Rule 2.53 New members

- (A) A new member is permanently assigned to a compliance group on the date of admission.
- (B) The initial compliance period for a new member begins on the first day of the month in which the member was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.¹⁸
- (C) A new member may not claim credit for education taken before the initial compliance period.

Rule 2.53 adopted effective January 1, 2008.

Rule 2.54 Exemptions

¹⁸ Rule 2.72 (C).

- (A) The following active members are exempt from MCLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:
- (1) officers and elected officials of the State of California;
 - (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
 - (3) those employed full-time by the State of California as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
 - (4) those employed full-time by the United States government as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.
- (B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a qualified legal services project or a qualified support center.¹⁹

Rule 2.54 adopted effective January 1, 2008.

Rule 2.55 Modifications

A member prevented from fulfilling the MCLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, financial hardship, or other good cause may apply for modification of MCLE compliance requirements. The State Bar must approve any modification.

Rule 2.55 adopted effective January 1, 2008.

Chapter 2. Compliance

Rule 2.70 Compliance groups

¹⁹ Business & Professions Code § 6213.

A member is permanently assigned to one of three compliance groups on the basis of the first letter of the member's last name at the date of admission.²⁰ The three groups are A-G, H-M, and N-Z. The member remains in the compliance group despite any subsequent change of last name.

Rule 2.70 adopted effective January 1, 2008.

Rule 2.71 Compliance periods

A compliance period consists of thirty-six months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A member must report MCLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

Rule 2.71 adopted effective January 1, 2008.

Rule 2.72 Requirements

- (A) Unless these rules indicate otherwise, a member who has been active throughout a thirty-six-month compliance period must complete twenty-five credit hours of State Bar approved education. No more than twelve and a half credit hours may be self-study.²¹ Total hours must include:
 - (1) at least four hours of ethics in the legal profession;
 - (2) at least one hour dealing with the elimination of bias in the legal profession by reason of but not limited to sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
 - (3) at least one hour of education designed to prevent, detect, and treat substance abuse or mental illness that impairs professional competence
- (B) Required education in legal ethics, elimination of bias, or the prevention, detection, and treatment of substance abuse or mental

²⁰ A historical exception exists. When the MCLE program was established in 1992, members were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

²¹ Rule 2.83.

illness that impairs professional competence may be a component of an approved educational activity that deals with another topic.

- (C) A member may reduce the required twenty-five hours in proportion to the number of full months the member was inactive or exempt in the thirty-six-month compliance period. Up to half the reduced hours may be self-study.²² A tool for applying this formula is available at the State Bar Web site.
- (D) Excess credit hours may not be applied to the next compliance period.²³

Rule 2.72 adopted effective January 1, 2008.

Rule 2.73 Record of MCLE

For a year after reporting MCLE compliance, a member must retain and provide upon demand and to the satisfaction of the State Bar

- (A) a provider's certificate of attendance;
- (B) a record of self-study that includes the title, provider, credit hours, and date of each activity; or
- (C) proof of exempt status.

Rule 2.73 adopted effective January 1, 2008.

Chapter 3. Activities approved for MCLE credit

Rule 2.80 Attending programs and classes

A member may claim MCLE credit for attending a MCLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

Rule 2.80 adopted effective January 1, 2008.

Rule 2.81 Speaking

A member may claim MCLE credit for speaking at an approved educational activity.

²² Rule 2.83.

²³ But see Rule 2.93.

- (A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim
 - (1) actual speaking time multiplied by four for the first presentation;
or
 - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (B) A panelist may claim
 - (1) either of the following for the first panel presentation:
 - (a) scheduled speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or
 - (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.
 - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (C) A member who introduces speakers or serves as a moderator may claim only the MCLE credit available to any attendee.

Rule 2.81 adopted effective January 1, 2008.

Rule 2.82 Teaching

A member may claim MCLE credit for teaching a law school course.

- (A) A member assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required MCLE in legal ethics, elimination of bias, or the prevention, detection, and treatment of substance abuse or mental illness that impairs professional competence.
- (B) A guest lecturer or substitute teacher may claim
 - (1) actual speaking time multiplied by four for the first presentation;
or
 - (2) actual speaking time only for each time a presentation is repeated without significant change.

Rule 2.82 adopted effective January 1, 2008.

Rule 2.83 Self-study

A member may claim up to half the credit hours required in a compliance period for

- (A) completing activities for which attendance is not verified by a provider;
- (B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or
- (C) authoring or co-authoring written materials that
 - (1) have contributed to the member's legal education;
 - (2) have been published or accepted for publication; and
 - (3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved educational activity.

Rule 2.83 adopted effective January 1, 2008.

Rule 2.84 Legal specialization

A member may claim MCLE credit for educational activities that the Board of Legal Specialization approves for certification or recertification.

Rule 2.84 adopted effective January 1, 2008.

Rule 2.85 Education taken while physically out of state

- (A) A member may claim MCLE credit for an educational activity authorized by an approved jurisdiction if it meets the requirements of these rules and if the member attends or does the activity outside California. A member may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.
- (B) A member who qualifies for MCLE authorized by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

Rule 2.85 adopted effective January 1, 2008.

Rule 2.86 Member credit request

A member may apply for credit for an activity directly relevant to the member's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

Rule 2.86 adopted effective January 1, 2008.

Rule 2.87 Bar examinations and MPRE

A member may not claim MCLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

Rule 2.87 adopted effective January 1, 2008.

Chapter 4. Noncompliance

Rule 2.90 Definition

Noncompliance is failure to

- (A) complete the required education during the compliance period or an extension of it;
- (B) report compliance or claim exemption from MCLE requirements;
- (C) keep a record of MCLE compliance²⁴; or
- (D) pay fees for noncompliance.

Rule 2.90 adopted effective January 1, 2008.

Rule 2.91 Notice of noncompliance

- (A) A member who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive member is not eligible to practice law.
- (B) If the notice requires the member to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

Rule 2.91 adopted effective January 1, 2008.

²⁴ Rule 2.73.

Rule 2.92 Enrollment as inactive for MCLE noncompliance

A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.

Rule 2.92 adopted effective January 1, 2008.

Rule 2.93 Reinstatement following MCLE noncompliance

Enrollment as inactive for MCLE noncompliance terminates when a member submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

Rule 2.93 adopted effective January 1, 2008.

DIVISION 5. TRUST ACCOUNTS

Chapter 1. Global Provisions

Rule 2.100 Definitions

- (A) A “Chargeable fee” is a per-check charge, per-deposit charge, fee in lieu of minimum balance, federal deposit insurance fee, or sweep fee.
- (B) A “Client” is a person or a group of persons that has engaged the attorney or firm for a common purpose.
- (C) “Comparably conservative” in Business and Professions Code 6213(j) includes, but is not limited to, securities issued by Government Sponsored Enterprises.
- (D) An “Exempt Account” is exempt from IOLTA requirements because it does not meet the productivity criteria established by the Legal Services Trust Fund Commission.
- (E) “Funds” are monies held in a fiduciary capacity by a member for the benefit of a client or a third party.
- (F) An “IOLTA account” is an Interest on Lawyers’ Trust Account as defined in Business and Professions Code section 6213(j).
- (G) An “IOLTA-eligible institution” is an eligible institution as defined in 6213(k) that meets the requirements of these rules, State Bar guidelines, and the State Bar Act.

- (H) "IOLTA funds" are the interest or dividends generated by IOLTA accounts.
- (I) A "member" is a member and a member's law firm.
- (J) A "member business expense" is an expense that a member incurs in the ordinary course of business, such as charges for check printing, deposit stamps, insufficient fund charges, collection charges, wire transfer fees, fees for cash management, and any other fee that is not a chargeable fee.

Rule 2.100 adopted effective January 12, 2008.

Chapter 2. Members' Duties

Rule 2.110 Funds to be held in an IOLTA account

- (A) Members must establish IOLTA accounts for funds that cannot earn income for the client or third party in excess of the costs incurred to secure such income because the funds are nominal in amount or held for a short period of time. In determining whether funds can earn income in excess of costs, a member must consider the following factors:
 - (1) the amount of the funds to be deposited;
 - (2) the expected duration of the deposit, including the likelihood of delay in resolving the matter for which the funds are held;
 - (3) the rates of interest or dividends at eligible institutions where the funds are to be deposited;
 - (4) the cost of establishing and administering non-IOLTA accounts for the client or third party's benefit, including service charges, the costs of the member's services, and the costs of preparing any tax reports required for income earned on the funds;
 - (5) the capability of eligible institutions or the member to calculate and pay income to individual clients or third parties;
 - (6) any other circumstances that affect the ability of the funds to earn a net return for the client or third party.
- (B) The State Bar will not bring disciplinary charges against a member for determining in good faith whether or not to place funds in an IOLTA account.

Rule 2.110 adopted effective January 12, 2008.

Rule 2.111 Funds not to be held in an IOLTA account

- (A) If a member determines that the funds can earn income for the benefit of the client or third party in excess of the costs incurred to secure such income, the funds must be deposited in a trust account in accordance with the provisions of Section 6211(b) of the Business and Professions Code and Rule 4-100 of the Rules of Professional Conduct or as the client or third party directs in writing.
- (B) A member should not designate an exempt account²⁵ as an IOLTA account.

Rule 2.111 adopted effective January 12, 2008.

Rule 2.112 Review of funds in an IOLTA account

A member must review an IOLTA account at reasonable intervals to determine whether changed circumstances require funds be moved out of the IOLTA account.

Rule 2.112 adopted effective January 12, 2008.

Rule 2.113 Charges against IOLTA funds

A member may allow an IOLTA-eligible institution to deduct chargeable fees permitted by Business and Professions Code 6212(c) from IOLTA funds. A member must pay any member business expense and may not allow the bank to deduct such expenses from IOLTA funds. If the State Bar becomes aware that a member business expense is erroneously deducted from IOLTA funds, the State Bar will inform the IOLTA-eligible institution and request that the error be corrected.

Rule 2.113 adopted effective January 12, 2008.

Rule 2.114 Reporting to the State Bar

A member must report compliance with these rules.

Rule 2.114 adopted effective January 12, 2008.

Rule 2.115 Consent to reporting

²⁵ As defined in Rule 2.100 (D)

By establishing funds in an account, a member consents to the eligible institution's furnishing account information to the State Bar as required by these rules, State Bar guidelines, and the State Bar Act.

Rule 2.115 adopted effective January 12, 2008.

Rule 2.116 Liquidity requirements

IOLTA accounts must allow prompt withdrawal of funds, except that such accounts may be subject to notification requirements applicable to all other accounts of the same class at the eligible institution so long as the notification requirement does not exceed thirty days.

Rule 2.116 adopted effective January 12, 2008.

Rule 2.117 Institution eligibility requirements

A member may place an IOLTA account only in an IOLTA-eligible institution. The State Bar will maintain a list of IOLTA-eligible institutions.

Rule 2.117 adopted effective January 12, 2008.

Rule 2.118 No change to other duties and obligations of a member

Nothing in these rules shall be construed as affecting or impairing the duties and obligations of a member pursuant to the statutes and rules governing the conduct of members of the State Bar including, but not limited to, provisions of Rule 4-100 of the Rules of Professional Conduct requiring a member to promptly notify a client of the receipt of the client's funds and to promptly pay or deliver to the client, as requested by the client, the funds in the possession of the member which the client is entitled to receive.

Rule 2.118 adopted effective January 12, 2008.

Chapter 3. Duties of an IOLTA eligible institution

Rule 2.130 Comparable Interest Rate or Dividend Requirement

- (A) An IOLTA-eligible institution must pay comparable interest rates or dividends as required under Business and Professional Code 6212(b) and 6212(e) and may choose to do so in one of three ways:
 - (1) allow establishment of IOLTA accounts as comparable-rate products;
 - (2) pay the comparable-product rate on IOLTA deposit accounts, less chargeable fees, if any; or

(3) pay the Established Compliance Rate determined by the Legal Services Trust Fund Commission.

(B) "Accounts of the same type" in section 6212(b) refers to comparable-rate products described in sections 6212(e) and 6212(j) for which the IOLTA-eligible institution pays no less than the highest interest rate or dividend generally available from the institution to non-IOLTA account customers when the IOLTA account meets the same minimum balance or other eligibility qualifications.

Rule 2.130 adopted effective January 12, 2008.

Rule 2.131 Payments to the State Bar

An IOLTA-eligible institution must remit payments to the State Bar in accordance with Business and Professions Code 6212(d)(1-3) and State Bar rules and guidelines.

Rule 2.131 adopted effective January 12, 2008.